## REMARKS

In an Office Action mailed August 25, 2004 (Paper No. 6) as entered in the above caption matter, the Examiner objected to claims 1 and 15 as well as claims 4-9. Claims 1-5 were rejected under 35 U.S.C. 103(a) given Fitzgibbon et al. in view of the "personal experience of the Examiner." The applicant respectfully traverses these objections and rejections and requests reconsideration.

Claims 1 and 15 were objected to as being informal. The Examiner specifically suggested that the terminology "location address as contains a unique identifier as is then stored in the memory" had an obscured meaning. Pursuant to this response, the applicant has changed claims 1 and 15 (and certain other dependent claims where a corresponding change was necessary to insure appropriate antecedent support) such that "contains" now reads as "corresponds to." The applicant believes that this more clearly sets forth the appropriate meaning and the applicant thanks the Examiner for his observation and the opportunity to make this clarification.

Claims 4-9 were objected to as being informal. The Examiner notes that the applicant uses the phrase "detecting tactile assertion" and argues that this "basically means pressing buttons or keys." The Examiner then suggests that the applicant "use of the more common terminology so that applicant's claim language can reach and be understood by a broader audience." Indeed, the Examiner could not have found a more sympathetic audience for concerns regarding claim language clarity than the applicant and applicant's counsel. Nevertheless, the applicant respectfully notes that there is no statutory or regulatory requirement that claim language "reach and be understood by a broader audience." The regulations and rules require clarity as versus widespread ubiquitous understanding. The applicant also notes, with all due respect, that the Examiner's proposed change would provide for unnecessary and undue limitations with respect to the ultimate application of these claims. "Detecting tactile assertion" does indeed include "pressing buttons or keys." This expression also includes other relevant actions, however. For example, this phrase should encompass manipulation of a rotating interface (such as a potentiometer), a slider, a dual inline package switch, and so forth. This phrase should also cover various kinds of touch screen interfaces.

While there may be dispute regarding whether such alternative interfaces in fact comprise a button or a key, there is no doubt that such interfaces do in fact comprise an interface accommodating tactile assertion. The applicant respectfully notes that the words in question are found in typical and common dictionaries and that the applicant has not sought to imbue these words with strange or contradictory meanings. The applicant only seeks to insure breadth of coverage where such breadth is appropriate and deserved. Therefore, given that the Examiner's observation, though reflecting a consummation devoutly to be wished and with which the applicant greatly sympathizes, is otherwise unsupported by any applicable requirement and is further at odds with an appropriate and rightful scope of protection as the applicant has a right to seek, the applicant respectfully submits that claims 4-9 are compliant with all relevant statutory and regulatory requirements and are otherwise in suitable condition to support examination and allowance.

Claims 1-15 have been rejected under 35 U.S.C. 103(a) given Fitzgibbon et al. in view of the personal experience of the Examiner.

The Examiner cited two Fitzgibbon references and did not specify, by number, the intended Fitzgibbon reference. Since only one of these two references makes clear provision for a fingerprint identification mechanism, however, and since the Examiner specifically refers to such capability in his comments, the applicant will presume for purposes of this response that the Examiner is referring to US 2003/0210131 (hereinafter "Fitzgibbon"). Should this be wrong, the applicant respectfully requests that the Examiner so advise in a non-final response.

The Examiner argues that Fitzgibbon discloses a memory have a plurality of unique identifiers, wherein at least some of the unique identifiers can also have stored in correspondence therewith a blocking indicator to indicate that the unique identifier associated with the blocking indicator is not authorized to control at least one aspect of a movable barrier operator. In particular, the Examiner points to paragraphs 0056 and 0080 of Fitzgibbon for support regarding blocking signal indications.

Fitzgibbon discloses a movable barrier operator system that accommodates use of a fingerprint as a command authentication mechanism. When the fingerprint detection mechanism is combined with a remote control device, Fitzgibbon teaches that the remote control device can either itself compare a newly input fingerprint against one or more previously approved fingerprints or can forward characterizing parameters as describe the fingerprint to a movable barrier operator. In either case, a user instruction (such as "open the door") can be conditioned upon a fingerprint-based subsequent determination that the user is in fact authorized to issue the instruction.

Fitzgibbon also notes that, in accordance with prior art technique, the movable barrier operator can work in conjunction with an obstacle detection mechanism (such as photo beams). So configured, automated movement of the barrier can be halted if the operator detects an obstacle in the path of the barrier. In such a case, an instruction by a user to close the barrier may ultimately be over-ridden by detection of such an obstacle notwithstanding that the user is otherwise vetted by presentation of their fingerprint.

Fitzgibbon further teaches that the remote control device can be a handheld wireless device (as may be carried in an automobile) or can be a wall-mounted unit (as may be mounted near an access door, for example). When the device comprises a wall-mounted unit, Fitzgibbon then teaches that it may be useful to permit the ordinary obstacle-detection response of the movable barrier operator to be over-ridden notwithstanding detection of an obstacle. This would permit an authorized person to force closure of the barrier even though the operator detects what appears to be an obstacle in the path of the barrier.

Since allowing the operator to effectively ignore detected obstacle information in this manner may not be desirable in all instances, Fitzgibbon also teaches, at paragraphs 0056 and 0080, that the obstacle detectors could instead be permitted to continue operating. In particular, as stated by Fitzgibbon at paragraph 0056:

> If desired, a step 238 could be modified so as to allow the photo beam protectors 42, 46 to continue to operate autonomously to provide either a permissive signal, an absence of a blocking signal, or a blocking signal on line 172 to control circuit 150.

This "blocking signal," of course, comprises an output of the obstacle detection mechanism and serves, when present, to block the ordinary operation of the operator in favor of an alternative automated response (such as stopping movement of the barrier and/or reversing movement of the barrier to thereby avoid damage to the barrier and/or to the obstacle itself).

Though Fitzgibbon provides his described transmitters with a capability of containing identifying information for a plurality of users, Fitzgibbon makes no specific teaching to permit any such user to be specifically denied authorization to command the corresponding operator. More particularly, Fitzgibbon makes no suggestion that a blocking indicator can be used to specifically indicate that a given unique identifier is not authorized to control the operator. Instead, Fitzgibbon's described "blocking" mechanism merely comprises a signal that effects, when present, modification of an instruction as was input by an acknowledged authorized user.

The applicant respectfully notes that Fitzgibbon does not disclose a blocking indicator, either in general or specifically as associated with a unique identifier, and particularly not as stored in a memory in correspondence with unique identifier. This being the case, the applicant respectfully submits that the Examiner has mischaracterized Fitzgibbon and that numerous important recitations of the claims as indicated are absent from the proposed combination.

The Examiner also seeks to place his personal knowledge into the record as a substantive part of his obviousness rejection. The applicant has two general objections in this regard. As a first objection, the applicant notes that the Examiner is basing his rejection upon speculation rather than facts. For example, consider the Examiner's statement, "the fact that the automobile that was denied access is given the reason by an attendant and a very short amount of time suggests that a key stroke combined with the information from the key card transmitter bring up on a display screen an identifier that tells the operator the reason for the access denial." The applicant respectfully notes that the same facts put forth by the Examiner are also suggestive of numerous other possibilities, none of which correspond to the recitations of the claims. In fact, the only teaching with respect to the latter is the applicant's

specification itself which of course cannot properly be used to guide the reviewer when considering an obviousness type rejection.

As a second objection, the applicant notes that the Examiner's statement of personal knowledge is inadequate and incomplete. In particular, it is lacking in a number of respects that might otherwise permit a substantive response by, for example, an affidavit of the applicant. 37 CFR 1.104(d) (2) reads as follows:

> When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

The applicant therefore respectfully makes a demand under this section of the Code of Federal Regulations for such an affidavit. The applicant notes that this affidavit should not only be specific with respect to the precise facts being relied upon by the Examiner (as versus speculation based thereon) but should also fully encompass the complete context surrounding the facts (to permit notice and discussion regarding possible issues regarding motivation or lack thereof to make a combination as suggested by the Examiner) as well as operative dates of activity (to permit, for example, the applicant to swear behind the prior art conditions known to the Examiner if such an action is appropriate and possible).

There are no other objections to or rejections of the applications or the claims. The applicant respectfully submits that the claims are patentable over and above the prior art references of record even presuming the Examiner's speculations to be accurate as the primary reference lacks numerous elements of the claims. The applicant therefore respectfully submits that claims 1-15 may be passed to allowance.

Respectfully submitted,

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